IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (LODG) NO.241 OF 2005

O.N.G.C. Ltd. ... Petitioner.

vs.

Western India Shipyard Ltd. ... Respondent.

Mr.Ravi Kadam with Rajeev Kumar & S.A.Bhalwal i/b. Vyas & Bhalwal, for Petitioner.

Mr.V.R.Dhond i/b. Ashwin S. for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 6th May,2005

P.C.:-

1. This is a petition taken out under Section 9 of the Arbitration and Conciliation Act,1996. The petitioner-ONGC is the owner of the vessel OSV Sindhu-4. This vessel was handed over to the respondent under Agreement dated 25.1.2002 for the purpose of repairs. The contract value as mentioned in the contract, was Rs.6.42 crores. There were 2 addendums to the contract issued by the petitioner in respect of the repairs to the said vessel. The contract

was terminated by the petitioner some time in August,2004. Thereafter, the petitioner filed petition under Section 9 of the Arbitration and Conciliation Act,1996, for permission to take away the vessel. The respondent claimed that they had possessory lien over the vessel. In that petition, an order was made on 24.8.2004. That petition was disposed of by consent of parties. The Court Receiver of this Court was appointed as receiver on the vessel. The receiver was directed to carry out survey of the vessel to find out what is the extent of repair work carried out by the respondent and also to find out what is the balance work. The receiver was directed, after receiving the report of Surveyor, to permit the nominee of the petitioner-ONGC to carry out balance repair work at the place where the vessel was docked. The Receiver was also directed to permit the nominee of the respondent to remain present at the time of repairs. There were also directions issued for constitution of arbitral tribunal. This order appointing the receiver was made by the Court without prejudice to the contention of the respondent that it has possessory lien over the vessel. By subsequent order passed by consent of parties dated 31st August,2004, this Court permitted shifting of the vessel for the purpose of repairs again without prejudice to the contention of the respondent that it has possessory lien over the vessel. There was a subsequent order passed by this Court on 6.10.2004 for sailing out the vessel from Goa.

2. After repairs to the vessel were completed, an application under Section 17 of the Arbitration and Conciliation Act, was moved before the

Arbitral Tribunal by the petitioner. Two reliefs were claimed in that application viz. (i) the petitioner should be permitted to conduct a Sea Trial of vessel Sindhu4 and (ii) the petitioner should be permitted to deploy the vessel for operations in Bombay High after the sea trial is completed. The Arbitral Tribunal by order dated 30.4.2005 appointed a Surveyor to carry out survey of the vessel to find out the work done after the earlier report. The survey was to be completed within a period of one week. So far as permitting deployment of vessel is concerned, the Arbitral Tribunal has observed that after the repairs, the vessel is now operational. There is also a certificate issued to that effect. But the Arbitral Tribunal found that permitting the petitioner to deploy the vessel would amount to variation or modification of the order made by the Court for appointment of the Receiver and therefore, the Arbitral Tribunal did not make that order.

3. The present petition has been moved by the petitioner – ONGC for discharging the Court Receiver so that the petitioner can deploy the vessel for operations in Bombay High. The learned Counsel appearing for petitioner submits that now repairs have been carried out, survey has been conducted and now the vessel can be deployed for work. Keeping the vessel idle will result in loss to the petitioner which is a public sector undertaking. It is submitted that the question as to what amount the respondent is entitled to for carrying out repairs on the vessel is sub-judiced before the Arbitral Tribunal, and it will be decided by the Arbitral Tribunal in due course. There is no justification for

continuing the vessel unused and idle till the award is made. The learned counsel appearing for the petitioner also pointed out that the lien which is claimed by the respondent under Section 170 of the Contract Act is also not available to the respondent because the Contract for repairs was terminated by the petitioner by letter dated 27.7.2004. The learned Counsel submits that keeping the vessel un-used though it is seaworthy and can be deployed for work, would result in loss of public money and therefore, permission should be granted for deploying the vessel. It is submitted that the Receiver was appointed initially so that repairs can be carried out, but now it is not necessary to continue the Receiver on the property. It is submitted that even if it is assumed that by virtue of the provisions of Section 170 of the Contract Act, the respondent has lien over the vessel then also it is not necessary to continue the lien considering that the petitioner is a public sector undertaking and as there can be no doubt about financial capability of the petitioner to pay to the respondent whatever amount that may be awarded by the Arbitral Tribunal in favour of the respondent.

4. On the other hand, on behalf of the respondent, it is submitted that because of the provisions of Section 170 of the Indian Contract Act, the respondent has lien over the vessel and therefore unless and until the repair charges are paid, the petitioner cannot be permitted to deploy the vessel. It is also contended that as the petitioner is not paying repair charges to the respondent it is becoming difficult for the respondent to continue its operations.

It has large number of employees to pay, and if the repair charges are withheld, the operation of the respondent would be adversely affected. It is also contended that the Arbitrators are not justified in holding that they have no powers to make order which modifies the order of this Court appointing the receiver.

5. It is clear from the rival submissions and the record that there is no dispute that the petitioner is the owner of the vessel. It is also not in dispute that now repairs to the vessel have been carried out and that there is a certificate issued to the effect that the vessel is seaworthy and can be used. It is also not in dispute that the petitioner is a public sector undertaking, and therefore, really speaking the vessel is public property. There can be no dispute that if the petitioner is not permitted to deploy the vessel though it is seaworthy, the vessel will remain idle and it will result in causing loss to the petitioner which is a public sector undertaking.

6. The situation at the time when the Court appointed receiver on the vessel was that the vessel was in possession of the respondent; the repairs to the vessel were incomplete; the petitioner had terminated the contract of the respondent; the respondent was not permitting the petitioner to carry on further repairs to the vessel; the respondent was claiming that he has possessory lien on the vessel till the repair charges which it was claiming to be due, were paid. In these circumstances, in order to ensure that the work of repairs of the vessel

goes on and at the same time interest of the respondent is also safeguarded, the Court by consent of parties appointed receiver on the vessel. After appointment of the Receiver, survey of the repair work carried on to the vessel by the respondent was done. It is only thereafter that the petitioner was permitted to carry on further repairs and that was also done in presence of the nominee of the respondent. Now the situation that was existing when the receiver was appointed, has changed. The work of repairs to the vessel is completed and the vessel has been declared seaworthy. Therefore, one of the considerations that weighed with the Court for appointing receiver on the vessel, no longer exists. The other consideration that weighed with the Court for appointing receiver on the vessel was safeguarding the interest of the respondent. It is only for safeguarding interest of the respondent that the Court directed that survey of repair work done by the respondent should be carried on, before any repair work is done by the petitioner. For that purpose only the nominee of the respondent was allowed to be remained present while petitioner was carrying on the balance work of repair. The receiver was also directed by the Court to carry out survey to find out what is the balance work of repair that was to be carried out by the petitioner. Now survey report about the repair work carried out by the respondent as also the repair work thereafter carried out by the petitioner has been secured. One more aspect in relation to safeguarding the interest of the respondent was that the respondent was claiming possessory lien on the vessel for its repair charges. Now this is the only aspect that remains. I have been informed at bar that the respondent has already been paid Rs.7.4

crores as repair charges by the petitioner and that the respondent is claiming additional amount of Rs.5.3 crores as repair charges from the petitioner. The claim of the respondent for repair charges is thus, a monetary claim. A question therefore, to be considered is whether it is necessary to continue the receiver on the vessel to secure the monetary claim of the respondent against the petitioner. The petitioner is a public sector undertaking whose capacity to pay whatever amount that may be awarded by the Arbitral Tribunal in favour of the respondent cannot be doubted. Even if, ultimately Award for the entire claim made by the respondent i.e. the amount of Rs.5.3 crores, is made in its favour then also considering the vast properties and financial resources of the petitioner-ONGC, it cannot be said that the respondent will not be able to recover the amount. The settled law is that the claim is required to be secured by the Court if the Court finds that unless the claim is secured the recovery will be difficult. In the present case, it cannot be said that the recovery of the awarded amount from the petitioner will not be possible, and therefore, in my opinion, for the purpose of securing claim of the respondent, it is not necessary to continue the Receiver on the vessel. The continuance of the receiver on the vessel, in my opinion, will not serve any useful purpose and will not result in any benefit to the respondent. If the receiver is continued, the vessel will lie idle, it will result in loss to the petitioner. But by keeping the vessel idle, no benefit will accrue to the respondent.

7. The respondent claims that appointment of the receiver should

continue because it has possessory lien on the vessel. The learned Counsel appearing for the respondent relied on the provisions of Section 170 of the Contract Act. Section 170 reads as under:-

> "170. Bailee's particular lien – When the bailee has in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the service he has rendered in respect of them. "

Perusal of the above quoted provision shows that a person to whom goods have been delivered for rendering any service for improvement in the goods, is entitled to retain the goods till his charges are paid. The right of lien declared by this provision presupposes the existence of a contract between the bailor and the bailee, the promise on the bailee's part being to bestow services involving labour or skill upon the goods bailed, and that on the part of the bailor to remunerate the other for the performance of those services. The right conferred by this provision does not arise until the services have been performed and the remuneration is due. Perusal of this provision makes it clear that this provision creates right in the repairer to retain the article given to him for repairs till his repair charges are paid. The purpose behind enacting this provision is to secure the claim of the repairer of the repair charges. Therefore, in case where there is a dispute between the parties about the amount

of repair charges, in my opinion, the bailee will not be entitled to claim absolute right to retain the goods. Similarly, in case of dispute as to the amount of repair charges, if the claim of the bailee can be otherwise secured by the Court, the possessory lien is capable of being removed by the Court. Similarly, therefore, if the Court finds that the claim of the repairer or the bailee is otherwise secured, the Court would be within its power in removing the lien. In my opinion, the right confers by Section 170 of the Contract Act cannot be permitted to be used by a bailee to hold a bailor to ransom. In so far as the present case is concerned, firstly according to the petitioner, the contract under which the vessel was delivered to the respondent for repairs has been terminated. There is serious dispute between the parties as to whether the respondent has carried out repairs to the vessel as per the contract. It is to be seen that the lien comes into existence on completion of the repair work, but in the present case, according to the petitioner the respondent did not complete the repair work. Therefore, it is doubtful whether a lien will come into existence in favour of the respondent. There is also serious dispute between the parties about the amount that is payable by the petitioner to the respondent towards the repair charges. In these circumstances, therefore, merely because of the provisions of Section 170 of the Indian Contract Act, in my opinion, receiver cannot be continued on the vessel. The continuance of the receiver on the vessel though it is seaworthy, in my opinion, will not advance interest of justice, and really speaking it will be against the public interest.

8. Before the parties started arguing the matter, I had suggested to the learned Counsel for respondent that as the receiver has been appointed by consent of parties, a via media could be found by providing that the vessel be continued under the receiver and the petitioner be appointed as agent of the receiver so that the petitioner can deploy the vessel. But this suggestion was not accepted by the respondent. According to the respondent, the vessel should be continued under the receiver and the petitioner should not be permitted to use the vessel. In my opinion, keeping the vessel under the receiver and not permitting the petitioner to use the vessel, will not result in any benefit to the respondent. It was also submitted before me that because the petitioner is not paying repair charges that are due to the respondent, the respondent is experiencing difficulties in carrying on its operations. In my opinion, merely continuing the receiver on the vessel and keeping the vessel unused will not solve this problem of the respondent. If the situation like this, it is open to the respondent to move the Arbitral Tribunal either for early disposal of the matter or for direction to the petitioner to pay at least that part of the amount which according to the respondent may be obviously due to the respondent from the petitioner. But merely because, according to the respondent, the petitioner is not paying the amount of repair charges which according to the respondent is due to it from the petitioner, the Receiver cannot be continued on the vessel and the vessel cannot be kept unused. Taking overall view of the matter therefore, in my opinion, it would be appropriate as also in the interest of justice to grant the petition in terms of prayer clause (a) and (b). It is accordingly, so granted.

The Receiver is discharged without passing accounts and subject to payment of costs of the receiver.

9. The learned Counsel for the petitioner states that whatever amount that may be required to be deposited with the Receiver would be immediately deposited. The statement is accepted.

10. The Respondent is directed to pay costs of this petition to the petitioner as incurred by the petitioner.

Petition disposed of.